

September 17, 1998

The Signing of the Constitution September 17, 1787

Today, September 17, is Constitution Day. It was 211 years ago today that a handful of Americans met in convention in Philadelphia and wrote a document that remains as timely as today's headlines and as timeless as the American Republic and its imitators across the globe.

The delegates who met in Philadelphia in the summer of 1787 were supposed to make suggestions as to how the Articles of Confederation might be improved. Indeed, Congress had called for a convention for that "sole and express purpose."

The Articles of Confederation had been in effect since March 1781, which was relatively late in the history of the Revolution. The British surrendered at Yorktown in October of 1781, so almost the entire war had been waged under what has been called "a gentlemen's agreement."

The Articles of Confederation were an improvement over the gentlemen's agreement, but not much of one. The States retained their "sovereignty, freedom, and independence, and every power, jurisdiction, and right" that was not "expressly delegated to the United States." Among those powers not delegated were the powers to tax, to raise troops, and to regulate commerce.

When Congress grew tired of begging the States for money, it called for a convention to consider changes. The convention was empowered to *suggest* amendments; any actual amendment to the Articles of Confederation required the consent of Congress and ratification by every State.

Awaiting a Quorum. The convention was scheduled to begin on the second Monday in May, the 14th, at the State House in Philadelphia, but on the appointed day, only Virginia and Pennsylvania were represented. It was not until Friday, May 25, that the Convention got under way; quorums were present from the States of New York, New Jersey, Pennsylvania, Delaware, Virginia, North Carolina, and South Carolina.

A Modest Company. It may have been the greatest political assembly the world has ever known, but it was a modest company. No more than eleven States ever voted. Rhode Island never did send delegates, and by the time New Hampshire's delegates arrived in late July,

New York's quorum had gone home. Fifty-five delegates attended the Convention at one time or another, but on any given day only about half that number were likely to be in attendance.

The Rule of Secrecy. They kept their proceedings secret. Years later, James Madison declared that no Constitution would have been possible without the rule of secrecy:

"Opinions were so various and at first so crude, that it was necessary they should be long debated before any uniform system of opinion could be formed. Meantime, the minds of the members were changing and much was to be gained by a yielding and accommodating spirit. Had the members committed themselves publicly at first, they would have afterwards supposed consistency required them to maintain their ground, whereas by secret discussion, no man felt himself obliged to retain his opinions any longer than he was satisfied of their propriety and truth and was open to argument."

The Virginia Plan. After they had chosen their officers and adopted their rules, the main business of the Convention opened on May 29 when Edmund Randolph, Governor of Virginia, detailed the defects in the Articles of Confederation and exhorted the Convention "not to suffer the present opportunity of establishing general peace, harmony, happiness and liberty in the United States to pass away unimproved." On behalf of the delegates from Virginia, Randolph introduced fifteen resolutions, now known as the

"Virginia Plan." In less than 100 working days, the Convention would forge that plan into the Constitution of the United States.

The Virginia Plan provided for a national legislature of two branches, the first to be elected by the people and the second to be elected by the first. The States were not to be represented equally, as they were under the Articles of Confederation, but according to population or property. The national legislature was to "legislate in all cases to which the separate States are incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual Legislation." The national legislature also was to be given power to veto "all laws passed by the several States contravening in the opinion of the National Legislature the articles of Union; and to call forth the force of the Union against any member of the Union failing to fulfill its duty under the articles thereof." A national executive and a national judiciary also were part of the plan.

The delegates worked until mid-June on the great issues of the Virginia Plan: Would the national legislature be bicameral? How would the legislature be chosen, and what would be its powers? Would it be supreme? How long would the executive serve? Would he have the veto? What powers would judges have, and who would appoint them? How would the new plan be ratified?

The New Jersey Plan. On Friday, June 15, William Paterson of New Jersey laid before the Convention a plan to revise, correct, and enlarge the Articles of Confederation without throwing them out.

His "New Jersey Plan" was the first organized reaction to the Virginia Plan, which Paterson and others believed, correctly, was contrary to the Convention's original charter from Congress.

Paterson's plan did provide Congress with additional powers, such as the power to tax imports, but Congress's new powers could not be exercised without the consent of a certain number of States. (Paterson did not specify how many.) The New Jersey Plan was sympathetically received by those delegates who were alarmed at the prospect of a national government and by many delegates from small States who feared their States would be swallowed up in any union with the large States. The small States had always been apprehensive of their larger, more populous, and often wealthier, neighbors.

The New Jersey Plan and the Virginia Plan were debated for three days. The New Jersey Plan was promoted for its practicality and modesty. John Lansing of New York pointed out that the Virginia Plan was illegitimate because the Convention was authorized only to propose amendments to the Articles of Confederation. Further, the people were not likely to approve changes as sweeping as the Virginia Plan proposed. Randolph's reply was heated, "When the salvation of the Republic is at stake, it would be treason to our trust not to propose what we found necessary."

On June 19, the Virginia Plan survived Paterson's test by a vote of 7-to-3, with Maryland divided. Two weeks earlier, the Convention might have

followed Paterson, but the delegates had been tutored by the federalists for a fortnight, and they had been persuaded to abandon the confederation and pursue the Virginia Plan.

The Great Debate and a Plea for Divine Guidance. On June 27, the Convention began the great debate on the most fundamental and divisive points, the composition and selection of the two branches of the legislature. The subject had been discussed before but never resolved. Both sides seemed unmovable: The small States were determined to maintain their equality in the national assembly and the large States insisted on proportional representation. "The fate of America," wrote Gouverneur Morris, "was suspended by a hair." It was during those crucial days that Franklin made his famous plea for prayer:

"In this situation of this Assembly, groping as it were in the dark to find political truth, and scarce able to distinguish it when presented to us, how has it happened, Sir, that we have not hitherto once thought of humbly applying to the Father of lights to illuminate our understandings? In the beginning of the Contest with Great Britain, when we were sensible of danger we had daily prayer in this room for the divine protection. Our prayers, Sir, were heard, and they were graciously answered. All of us who were engaged in the struggle must have observed frequent instances of a Superintending Providence in our favor. To that kind Providence we owe this happy opportunity of consulting in peace on the means of establishing our future national

felicity. And have we now forgotten that Powerful Friend? Or do we imagine that we no longer need his assistance?"

Franklin then moved that a clergyman be found to offer morning prayers. The motion was seconded, but Hamilton and others were apprehensive. Legend says that Hamilton opposed the idea because the Convention should not take foreign aid! When someone pointed out that the Convention had no funds to employ a clergyman, the Convention adjourned without a vote on Franklin's motion.

Impasse, then the Great Compromise. On June 29, by a vote of 6-to-4, with one State divided, the Convention agreed that representation in the first house of the legislature would *not* be according to the rule of the Articles of Confederation "but according to some equitable ratio." Oliver Ellsworth of Connecticut then moved that, in the second house, each State would be represented equally. "I confess," he said, "that the effect of this motion is to make the general government partly federal and partly national. This will secure tranquility, and still make it efficient; and it will meet the objections of the larger States."

On Monday morning, July 2, the crucial question was put to the Convention, shall each State have an equal vote in the second house? The question failed on a tie vote. The Convention was at a standstill.

In an effort to break the impasse, one member from each State was appointed to a committee to find a compromise. In order for the committee to meet, and to allow the delegates to celebrate the anniversary of their independence, the Convention adjourned until the 5th.

Back in Convention on the 5th, Elbridge Gerry of Massachusetts presented the committee's report. It proposed that the first branch of the legislature should have one representative for every 40,000 inhabitants and the power to originate all bills for raising or appropriating money, and that the second branch should provide each State with an equal vote. Large-state delegates promptly criticized the report, and the debate raged for 10 days.

Then, on the morning of July 16, the Convention agreed to equal representation in the second branch. This was the Great Compromise of the Convention, and it passed by the narrowest margin possible: Connecticut, New Jersey, Delaware, Maryland, and North Carolina voted for it. Pennsylvania, Virginia, South Carolina, and Georgia voted against it. Massachusetts, a large State that often voted with Pennsylvania and Virginia, was divided. New York, a large State, had left the Convention. Had the Great Compromise not been adopted, the small States might have left, too.

The Committee of Detail. On July 26, the Convention referred the Virginia Plan, as amply amended, the Paterson Plan, and a Pinckney Plan to a Committee of Detail to be arranged and standardized. The committee comprised Rutledge of South Carolina, Randolph of Virginia,

Gorham of Massachusetts, Ellsworth of Connecticut, and Wilson of Pennsylvania. So that the committee could complete its work, the Convention adjourned until August 6.

When the Convention reconvened, Rutledge gave the committee's report. Surprisingly, it drew heavily on the Articles of Confederation for both organization and language. The committee had given names to the new units of government: The legislature was now "Congress"; the first house was the "House of Representatives" and the second, the "Senate"; the "Supreme Tribunal" was now the "Supreme Court"; and the executive was the "President of the United States of America". There was a preamble which began, "We the people of the States of New Hampshire, Massachusetts, Connecticut, . . ." etc. The broad resolutions of the Convention were now being drawn in detail.

Commerce and Slavery. Now their work began again. The Convention started through the committee's report, point by point, and they continued for five weeks. These were the weeks when the Constitution was perfected and concluded. All of the major points were settled, but two were particularly difficult: regulating commerce (particularly, the importing of slaves and the taxing of exports) and electing the President. Both problems were addressed with the help of committees specially appointed to reach a compromise.

The governance of imports and exports was vital to the States, and the debate was particularly sharp. Agriculture

was divided from manufacturing; importers from exporters; the South from the North. If Congress was given power to exclude slaves, the Southern States would not agree to the Constitution. If Congress was empowered to regulate or tax exports, northern interests would dissent. The debate was primarily commercial, not moral, but on August 22, George Mason launched a scorching moral attack on the "infernal traffic" of slavery which "brings the judgment of heaven on a Country." In prophetic voice he added,

"As nations cannot be rewarded or punished in the next world they must in this. By an inevitable chain of causes and effects Providence punishes national sins, by national calamities."

The Convention finally determined that Congress would be forbidden to prohibit the importing of slaves until the year 1808 and forbidden to tax or levy duties on exports. These compromises were second only to the Great Compromise in securing a constitution.

The Committee of Style. By early September, the document was nearly ready. It needed only to be honed and polished. William Samuel Johnson of Connecticut, Hamilton, Gouverneur Morris, Madison, and Rufus King of Massachusetts were appointed to a Committee of Style. The chief responsibility of the final draft fell to Morris, and it was from his pen that the Constitution's final phrases came. Madison said of Morris, "A better choice could not have been made." On Wednesday, September 12, the Committee of Style made its report. The first words of the

document read, "We, the People of the United States. . . ."

During the next few days the draft was perfected, and on Saturday, September 15, at about six o'clock in the evening, the Convention voted to adopt the Constitution. That night and Sunday, the Constitution was written out on parchment by an assistant clerk of the Pennsylvania Assembly.

The Signing. On Monday, September 17, the Convention met for the last time. Three members (Randolph, Mason, and Gerry) had said they would not sign, and Gouverneur Morris contrived a form of execution to disguise their dissent. The Constitution was to be adopted "by the unanimous consent of the States present." By using this form, neither opposed individuals nor absent States were mentioned. One final change was made: At the urging of Washington, the number of citizens represented by a member of the House was changed from 40,000 to 30,000. The secretary erased "forty" and squeezed in "thirty".

The members then signed the document. Washington first, and the other delegates in the traditional order of States from north to south. Thirty-eight members signed, and the signature of a thirty-ninth who was absent was added at his request.

A Rising Sun. While the last members were filing forward to sign, Benjamin Franklin directed their attention to the President's chair, which had on its

back a carved sun, painted in gold. Franklin observed that painters had found it difficult to distinguish in their art between a rising and a setting sun, and that he had often during the Convention looked at that chair without being able to tell whether it showed a sun rising or setting. "But now at length," he said as the last names were being signed, "I have the happiness to know that it is a rising and not a setting sun."

The Great Convention then adjourned.

That night, the Founders dined at the City Tavern. Washington bid his colleagues a cordial farewell, then retired to his room "to meditate on the momentous work which had been executed." Within two years he would be President of the United States of America.

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Sources: The following books were used in preparing this account of the Philadelphia Convention: Sol Bloom, *THE STORY OF THE CONSTITUTION* (The United States Constitution Sesquicentennial Comm'n, 1937); Max Farrand, *THE FRAMING OF THE CONSTITUTION OF THE UNITED STATES* (Yale Univ. Press, 1913); Max Farrand, *THE RECORDS OF THE FEDERAL CONVENTION OF 1787* (Yale Univ. Press, 1937 rev. ed.); Forrest McDonald, *E PLURIBUS UNUM* (Liberty Press, 2nd ed. 1979); Carl Van Doren, *THE GREAT REHEARSAL* (Viking Press, 1961 reprint of 1948 ed.); Charles Warren, *THE MAKING OF THE CONSTITUTION* (Little, Brown, 1937).